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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/784,462

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Humberto A. Berra

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7590

07/17/2006

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EXAMINER

PELLEGRINO, BRIAN E

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 07/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/784,462

Applicant(s)

BERRA ET AL.

Examiner

Brian E. Pellegrino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-109 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 10-21, 24-29, 40-60, 65-67, 70-72, 75-77, 80-82, 85-87, 90-92 and 95-97 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 August 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims withdrawn from consideration are 7-9,22,23,30-39,61-64,68,69,73,74,78,79,83,84,88,89,93,94,98-109.

DETAILED ACTION

Election/Restrictions

Applicant traverses withdrawal of claims 100,101,103,105,106,108, but failed to realize that these claims depended from withdrawn independent claims that were directed to non-elected species.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the support member connected to the graft without touching the stents or touching one of the stents must be shown or the feature(s) canceled from the claim(s). Applicant states that the limitations of claims 26-28 are shown in Fig. 1, but fails to explain how this is evident. According to the Examiner's understanding of the view shown in Fig. 1, it clearly appears as the "support member" contacts the stents since the lines clearly cross one another. Is the "support member" extending radially inward to protrude into the luminal space? The text of the section of 37 CFR 1.121(d) not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,2,5,6,10,11,14,15-17,20,21,24-29,40-42,44-47,49,51,55,57,59,65-67,70-72,75-77,85-87,90-92,95-97 are rejected under 35 U.S.C. 102(a,e) as being anticipated by Van Schie et al. (2003/883005). Fig. 2 shows a stent graft having a plurality of stents with the middle stents being considered as inner stents and a tubular graft body surrounding the stents. It can also be seen there is a curved longitudinal support member 8 connected to the graft independent of the stents and has rounded ends 9,10. Van Schie et al. disclose the support member is a polymer or metal and is preset, paragraph 45. The support member is substantially symmetrical with respect to a centerline that is about the middle of the device going around the circumference. It can be construed that the rounded ends are curved extremities. With respect to the new limitation of claims 1 and 15 that the curved support member has a centerline parallel to the longitudinal axis, it can be said that the center point of any arc that lies along a longitudinal axis of a longitudinally extending conduit would be parallel to the longitudinal axis.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-6,10-21,24-29,40-60,65-67,70-72,75-77,80-82,85-87,90-92,95-97 are rejected under 35 U.S.C. 103(a) as being unpatentable over White et al. (6099558) in view of Jayaraman (6464719). White et al. disclose a stent graft (Fig. 3) with a plurality of stents **17** and a tubular graft body **16**. It can also be seen that the stent graft has a distal most stent **17a** with at least one more apex than another of the stents. However, White et al. fail to disclose a longitudinal support member. Jayaraman teaches (Fig. 8) a longitudinal support member **53** that is curved and shorter than the body of the stent graft. Jayaraman also teaches (Fig. 7) that the support members have looped ends **55**. Jayaraman additionally teaches that the longitudinal members have what can be construed as a partial helix shape or S-shape and used in expansion and made of nitinol, col. 2, lines 3,4,37,38. It would have been obvious to one of ordinary skill in the art to use curved longitudinal support members as taught by Jayaraman in the stent graft of White et al. such that it provides more support to the vessel walls and assist in expansion and keep the stent in its expanded form. Regarding the limitations that the support is symmetrical to the centerline of the graft, it is being interpreted that the middle of the graft is the centerline and thus half of the support is on one side and the other half on the opposite side. The support members can also be said to symmetrical with respect to a centerline through itself.

Response to Arguments

Applicant's arguments filed 4/7/06 have been fully considered but they are not persuasive. Applicant argues that Van Schie has a support member that extends along

a single axis. According to Applicant's claims, the claimed support member also extends along a single axis, since the claims recite the "support member has a centerline that is **parallel** to the longitudinal axis and is **substantially** symmetrical with the longitudinal axis." The use of "substantially symmetrical" is terminology of relative degree, which has no basis of comparison. For this reason, it is considered broad and relatively unlimited in how it can be interpreted. In response to Applicant's argument that Van Schie includes additional structure or so called "separate fastening means" not required by Applicant's invention, it must be noted that Van Schie discloses the invention as claimed (rounded ends). The fact that it discloses additional structure not claimed is irrelevant to the issue of patentability. Clearly, anything that is rounded has a curve to it. In response to applicant's argument that the Van Schie reference fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a "support member that extends **only** between the inner stents and **no further than** one of the two inner stents") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the examiner's conclusion of obviousness for combining White and Jayaraman is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the

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claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). First the Applicant argues that the Jayaraman patent does not relate to stents, but has failed to read the title of the patent. Second even if Jayaraman does not disclose separate stent sections, that is irrelevant since the Examiner was relying on the teaching for providing the elongate support member. It is well known in the art to provide elongate structural elements to conduits or stents placed in the vascular system. Thus the combination is proper and the motivation to combine is for structural stability, just as rebar is used to stabilize lengths of concrete. Additionally, Applicant has misunderstood the Examiner's statement about Jayaraman's structural pieces suggesting they aid in expansion, which is true in that they can function to keep the stent in its expanded form to prevent the apparatus from collapsing. As mentioned above the interpretation of "substantially symmetrical" has been treated the same as in applying the White and Jayaraman references and thus the limitation is met by the references.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Pellegrino whose telephone number is 571-272-4756. The examiner can normally be reached on M-Th (6:30am-4pm) and alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TC 3700, AU 3738

BRIAN E. PELLEGRINO
PRIMARY EXAMINER

